pleader filed by the garnishee can certainly be no more binding on the unserved debtor than a judgment in the garnishment suit. The principal case, therefore, seems clearly right. The result that the company must pay twice is harsh. But the situation is the same in any case where a debtor successively sued on one claim by two claimants in different jurisdictions is unable to serve both in any one jurisdiction. The better course for the debtor in such a case and for the defendant in the principal case would seem to be, not to interplead but to defend each action as it is brought.

LAW AND FACT — PROVINCES OF COURT AND JURY — COMPETENCY OF WITNESSES DEPENDING ON THE MAIN ISSUE. — In a prosecution for perjury it was alleged that the defendant previously had brought a suit for divorce in Texas; that he had in that suit sworn, in order to give the court jurisdiction, that he had been resident in Texas for twelve months; and that he had not, in fact, been so resident. The divorce was granted in the prior suit. The wife was offered by the state as witness for the prosecution. The court, after viewing the former divorce decree, permitted the wife to testify. *Held*, that there was no error. *Laird* v. *State*, 184 S. W. 810 (Texas).

The general rule that preliminary questions of fact are for the judge is no longer questioned. But the authorities are in conflict when the preliminary question of fact is also the main issue. Thus some courts hold that such circumstance should not prevent the court from passing on the question. *State* v. *Lee*, 127 La. 1077, 54 So. 356; *Hichins* v. *Eardley*, L. R. 2 P. & D. 248; *Doe* v. *Davies*, 10 Q. B. 314. Others, however, allow the question of admissibility to go to the jury, with instructions altogether to disregard the evidence if it is proved inadmissible. *Respublica* v. *Hevice*, 3 Wheeler Cr. Cas. 505 (Pa.); *Stowe* v. *Querner*, L. R. 5 Ex. 155. There seems to be no reason for departing from the general rule. The decision of the ultimate issue is, after all, still with the jury; and any undue influence, consequent upon the expression of the court's opinion, can be averted by having the jury retire during the determination of the question. The principal case, however, presents a novel problem. In objecting to the testimony of the witness, on the ground that she is his wife, the defendant is inconsistent both with his position in the former divorce suit and with his position as to the main issue in the present trial. As regards the first inconsistency, the law appears to be that a collateral attack on a judgment for want of jurisdiction of a party thereto can only be made by one not a party to the judgment. *Heffron* v. *Cunningham*, 76 Texas 312, 13 S. W. 259; *cf.* *Valentine* v. *McGrath*, 52 Miss. 112. But it would seem as if the defendant's attitude in this trial must also bar his objections. For by proving the preliminary fact, that she is still his wife, he is confessing the main issue, that he committed perjury and the divorce decree was void. The state is saved from an equally anomalous position by the fact that the burden of proof in a preliminary question of fact is upon the objecting party. For all relevant evidence is *primâ facie* admissible. See J. B. Thayer, "Presumptions and the Law of Evidence," 3 HARV. L. REV. 141, 144. Thus the state is simply objecting to the defendant's position. It is submitted that the defendant should be prevented from assuming such inconsistent attitudes in the same trial, by something akin to estoppel.

LIBEL AND SLANDER — DAMAGES — LIABILITY FOR UNAUTHORIZED REPETITION. — Defendant slandered the plaintiff by words actionable *per se*. The trial judge refused to instruct the jury that in assessing damages unauthorized repetitions by third parties were not to be considered. *Held*, that this was not error. *Southwestern Telegraph and Telephone Co.* v. *Long*, 183 S. W. 421 (Texas).

It is a well-established rule that the publisher of slander is not liable for its unauthorized repetition. *Dixon* v. *Smith*, 5 H. & N. 450; *Cates* v. *Kellogg*, 9 Ind. 506; *Shurtleff* v. *Baker*, 130 Mass. 293. See *Schoepflin* v. *Coffey*, 162 N. Y.

12, 17, 56 N. E. 502, 504. But an exception has been made when the repetition is privileged. *Derry* v. *Handley*, 16 L. T. (N. S.) 263. In the principal case the court makes another exception on the ground that the words are here actionable *per se*. The jury, which can assess general damages, will, as a matter of fact, doubtless take these repetitions into consideration. But by authority, any instruction to that effect is error. *Hastings* v. *Stetson*, 126 Mass. 329; *Prime* v. *Eastwood*, 45 Ia. 640. See NEWELL, SLANDER AND LIBEL, 3 ed., § 1079. Now the established general rule rests on an obsolescent principle of causation. See 27 HARV. L. REV. 389. But the fact that the law considers the slander actionable *per se* can certainly not effect such causation. It is therefore difficult to justify this distinction. The decision, however, is desirable in placing a further limitation upon a rule which is without basis of reason. For it is highly foreseeable that slanderous remarks will be repeated, and it is just this repetition which is responsible for the main injury in defamation. See *Davis* v. *Starrett*, 97 Me. 568, 576, 55 Atl. 516, 519.

LIBEL AND SLANDER — PUBLICATION — BY OFFICER OF CORPORATION TO AGENT. — A letter, defamatory of plaintiff, was dictated by an officer of a corporation to his stenographer and sent to a fellow-employee. Each was acting in the prosecution of the business of the corporation. *Held*, that this did not constitute a publication of a libel. *Central of Georgia Ry. Co.* v. *Jones*, 89 S. E. 429 (Ga.).

It has been held that dictation to a stenographer by an officer of a corporation is not a publication. *Owen* v. *Ogilvie Pub. Co.*, 32 App. Div. 465, 53 N. Y. Supp. 1033. See 12 HARV. L. REV. 355. The principal case applies the same principle to communications between any fellow-employees. These cases argue that, as a corporation is an entity, acting only through agents, a communication by one agent to another is merely a communication by the corporation to itself; that the agents are merely parts of the deliberative machinery of the corporation, as distinguished from their identity as individuals. But such a distinction seems neither desirable nor true to fact. See 27 HARV. L. REV. 284. It seems impossible, as a matter of practice, to dissociate the individual from the employee. Agents do form personal opinions and act upon them. The danger to the community of licensing such communications, which in the case of a large concern might well become widespread, seems to outweigh the consideration that the corporation would otherwise be seriously hampered in the transaction of its business. If the communications are necessary and reasonable, as in the principal case, the defense of privilege is available. *Lawless* v. *Anglo-Egyptian Cotton & Oil Co.*, L. R. 4 Q. B. 262; *Edmondson* v. *Birch & Co.*, [1907] 1 K. B. 371, 380.

MUNICIPAL CORPORATIONS — ABUTTING OWNERS — EASEMENTS. — Adjoining the plaintiff's property the city erected a public bathhouse with projections upon the sidewalk which violated the city charter and a city ordinance. The plaintiff applies for a mandatory injunction requiring the city to remove the encroachments. *Held*, that the injunction be granted. *Hellinger* v. *City of New York*, 95 Misc. 394.

It is generally held that an abutter has a property right in the air, light, and access afforded by the street, which cannot be taken without compensation. *Story* v. *N. Y. etc. R. Co.*, 90 N. Y. 122; *Abendroth* v. *Manhattan Ry. Co.*, 122 N. Y. 1, 25 N. E. 496; *De Geofroy* v. *Merchants, etc. Ry. Co.*, 179 Mo. 698, 79 S. W. 386. See 1 LEWIS, EMINENT DOMAIN, 3 ed., § 123. Encroachments on the sidewalk which materially touch this right will be enjoined, and an ordinance permitting such cannot be supported. *McMillan* v. *Klaw & Erlanger Const. Co.*, 107 App. Div. 407, 95 N. Y. Supp. 365. In most cases the offenders have been private individuals. It seems however not improper to